

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-1181

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

JOSEPH RUBIN,

Defendant-Appellant.

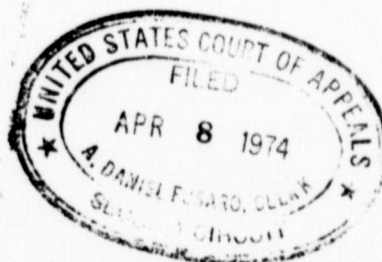
ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

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[Docket Entries]

[DOCKET ENTRIES]

6003
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA :
-against- :
MITCHELL SORKIN, DENNIS MAYER : 72 CR 1202
and JOSEPH RUBIN, :
Defendants. :
----- x

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[INDICTMENT]

UNITED STATES OF AMERICA

- against -

MITCHELL SORKIN, DENNIS MAYER,
and JOSEPH RUBIN,

Defendant.

72CR1202

INDICTMENT

Crim. No. _____
(T. 21, U.S.C., §840 and
§841(a)(1); T. 18, U.S.C.,
§2)

OCT 31 1972

THE GRAND JURY CHARGES:

BACTELS, J.

COUNT ONE

On or about and between the 20th day of March, 1972 and the 13th day of April, 1972, within the Eastern District of New York, the defendant MITCHELL SORKIN, the defendant DENNIS MAYER, and the defendant JOSEPH RUBIN did combine, conspire and confederate among themselves and together with Anthony Lawless, herein named as a co-conspirator but not as a defendant, to commit an offense in violation of Title 21, United States Code, Section 841(a)(1) by conspiring to knowingly and intentionally distribute quantities of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 846).

COUNT TWO

On or about the 21st day of March, 1972, within the Eastern District of New York, the defendant MITCHELL SORKIN and the defendant DENNIS MAYER did knowingly, intentionally, and unlawfully distribute a quantity of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1); Title 18, United States Code, Section 2).

COUNT THREE

On or about the 30th day of March, 1972, within the Eastern District of New York, the defendant DENNIS MAYER did knowingly, intentionally and unlawfully distribute a quantity of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1))

A TRUE BILL

cannot wait until just a minute before the Judge is about to give his charge and say that you would like to have this or that. It cannot be done that way, not carefully.

All right, we will bring them in.

(Jury present.)

THE COURT: Ladies and gentlemen, you have listened most attentively to the testimony and to the summations.

The testimony presented the facts through witnesses and exhibits and the summations presented the arguments of the attorneys, pro and con, concerning those facts.

The time has come for you and me to perform our respective functions in the trial of this case.

You have been very patient. You have heard the voices of the attorneys and the voice of the Court, and now your voice will be heard.

At the beginning, I wish to take this opportunity to express my appreciation for your attentiveness and your alertness during the course of this trial, and also for the sacrifice which each and every one of you have made

1
2 in neglecting your business and your personal
3 affairs in order to see that the ends of jus-
4 tice might be accomplished.

5 You have been tolerant of the unavail-
6 able delays, and I have noted that you have
7 been exceedingly interested in your task.

8 Every criminal prosecution is important
9 to the government of the United States, and it
10 is equally important to the defendants on
11 trial.

12 Each is entitled to equal justice at
13 your hands.

14 Now, from my experience, justice is best
15 dispensed in a calm, patient and deliberate
16 manner, and I sincerely request you keep this
17 attitude throughout your deliberations, when
18 you go into the jury room.

19 Of course, you should always respect the
20 viewpoints of your fellow jurors. You should
21 talk to each other with consideration and intel-
22 ligence and decide issues in this case on the
23 merits and on the merits alone.

24 You have heard the evidence. You have
25 heard the arguments of counsel, and now it becomes

1
2 my duty to give you the law governing this
3 case.

4 It is your duty, ladies and gentlemen,
5 to accept the law as it is given to you by
6 the Court and to determine the facts of the
7 case for yourselves.

8 The proper application of the law of
9 the case to the facts of the case as you will
10 find those facts to be will determine your
11 verdict.

12 I wish to make it very plain to you
13 that the sole responsibility and the sole power
14 in determining these facts depends upon you,
15 and anything I may say or seem to say as indi-
16 cating any view or any opinion as to the facts
17 is to be completely ignored by you.

18 In determining the facts, you must not
19 be influenced by any rulings that the Court
20 may have made during the course of the trial.

21 These rulings dealt with matters of
22 law. They did not deal with questions of fact.

23 The Court's ruling on an objection made
24 by any of these attorneys and any questions
25 which the Court may have posed to any witness is

not to be considered by you as indicating either the guilt or the innocence of these defendants, and the same is true with respect to any reflection of the Court's voice relative to any such matters or in connection with any comments or statements the Court may have made to any of these attorneys.

The Court expresses no opinion as to the guilt or the innocence of these defendants. The determination of such guilt or innocence is a matter that rests exclusively with you.

Now there are some general principles of law which are of importance in any criminal case. I wish first to make some statements which apply to criminal cases in general.

Some of you may know of those principles. After this I shall endeavor to make clear to you what this part of the case involves.

It is an established principle that an indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused, and it does not create any presumption or permit any inference

1
2 of guilt against any or either of these
3 defendants. It is also a principle, well
4 recognized in law, that every person who is
5 charged with the commission of a crime is
6 presumed to be innocent, and the burden
7 rests on the government to prove to your sat-
8 isfaction, beyond a reasonable doubt, every
9 element of the crime, and that the party is
10 guilty as charged.

11 This presumption of innocence remains
12 with the defendants all through the case until,
13 if every, it is overborne by proof which satis-
14 fies you beyond any reasonable doubt that the
15 presumption of innocence no longer remains with
16 them.

17 Thus, you look at all the evidence in-
18 troduced in this case and you ask yourselves
19 whether or not you are satisfied beyond a
20 reasonable doubt that the offenses have been
21 committed as charged in this indictment.

22 If you are so satisfied, then it will
23 be your plain duty to convict the defendant or
24 the defendants who have committed the offenses,
25 but if there exists in your minds a reasonable

doubt of a defendant's or defendants' guilt, you must give that defendant or both defendants, as the case may be, the benefit of that doubt and acquit that defendant or both the defendants, as the case may be.

In this case there is more than one defendant, and you must therefore consider the innocence or guilt of each defendant separately.

The question of reasonable doubt is one which can be determined only by you. It cannot be determined by arguments or the opinion of counsel.

Now, in reaching a conclusion with respect to reasonable doubt, you must consider all of the evidence together, not just a particular segment or particular portion of the evidence isolated from the rest of the evidence.

The term, "reasonable doubt," as used in this charge, does not mean any possible doubt you might have, but it means such a reasonable doubt as a careful and a prudent and a reasonable man or woman ought to entertain in the circumstances. It means a doubt

2 based on reason and which is reasonable, in
3 view of all the evidence.

4 The key word is "reasonable."

5 A reasonable doubt may arise from
6 the evidence produced, or from the lack of
7 evidence in the case.

8 It is the obligation of the government
9 to prove a defendant guilty beyond a reasonable
10 doubt, but it is not the obligation of the
11 government to prove a defendant guilty beyond
12 a shadow of a doubt.

13 It is rarely possible to prove anything
14 to an absolute certainty or beyond all possible
15 doubt. Seldom can one prove a controversial
16 fact with mathematical certainty.

17 A reasonable doubt does not mean a vain
18 or a fanciful, a vague or whimsical or an imagin-
19 ary doubt, nor does it mean a possible doubt
20 created by a reluctance on the part of a juror
21 to perform an unpleasant task.

22 It means a doubt arising out of the
23 evidence or lack of evidence which is a reason-
24 able doubt.

25 Reasonable doubt is a doubt that would

cause prudent men to hesitate before acting in matters of importance to themselves.

One is said to be convinced in a case of this kind, beyond a reasonable doubt, when, after an impartial comparison and consideration of all of the evidence, one can conscientiously say that he or she is convinced to a moral certainty of the truth of the charge.

If there is a reasonable doubt in your minds about the guilt of a particular defendant on the charges in the indictment, he is entitled to the benefit of that reasonable doubt, and then to an acquittal on the charges.

If, on the other hand, you think a particular defendant's guilt is clear, beyond a reasonable doubt, then you must find him guilty as charged.

This is true with respect to each of these defendants.

The machinery of trial calls for the exercise of various functions by counsel and by the witnesses who testify, by the Court who presides and by you, the jury.

You, as a jury, exercise the fact-finding

1
2 function.

3 As you have been told before, you
4 are the sole judges of the facts. That is to
5 say, it is you who must consider all of the
6 evidence. You weigh this evidence and you
7 draw inferences from the evidence, but only
8 from the evidence, and you must distinguish
9 between mere arguments of counsel, which have
10 been made before you, and the evidence, and
11 the evidence upon which those arguments
12 rest.

13 Now, the repetition of an argument,
14 how often made, does not constitute evidence.
15 You must carefully analyze the assertions
16 which have been made to you by counsel for
17 the defendants and by counsel for the govern-
18 ment. You ascertain what basis those assertions
19 have in the evidence.

20 That brings us to the indictment itself.
21 I will read the indictment. It states in Count
22 One that, "On or about and between the twen-
23 tieth day of March, 1972, and the thirteenth
24 day of April, 1972, within the Eastern District
25 of New York, the defendant, Dennis Mayer, and

the defendant, Joseph Rubin, did combine, conspire and confederate among themselves and together with Anthony Lawless, herein named as a co-conspirator but not as a defendant, to commit an offense in violation of Title 21, United States Code, Section 841(a)(1), by conspiring to knowingly and intentionally distribute quantities of cocaine hydrochloride, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, Section 846."

That is Count One. It is a conspiracy count of these two defendants.

Count Two refers only to the -- and Count Three refers only to the defendant, Dennis Mayer.

Count Two says that, "On or about the twenty-first day of March, 1972, within the Eastern District of New York, the defendant, Dennis Mayer, did knowingly, intentionally and unlawfully distribute a quantity of cocaine hydrochloride, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, Section 841 (a) (1)."

Count Three says that, "On or about the thirtieth day of March, 1972, within the Eastern District of New York, the defendant, Dennis Mayer, did knowingly, intentionally and unlawfully distribute a quantity of cocaine hydrochloride, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, Section 841 (a) (1)."

1

[Charge of the Court

Tr. p.

2 THE COURT: (Continuing) Now, in the
3 interest of clarity, I shall first refer to
4 Counts 2 and 3 pertaining only to Dennis --
5 the defendant Dennis Mayer, and then I
6 shall return to the charge of conspiracy in-
7 volving both the defendants, Dennis Mayer and
8 Joseph Rubin.

9 Now, Section 841-A of Title 21 of
10 the United States Code claimed to have been
11 violated by Dennis Mayer in Counts 2 and 3 of
12 the indictment, reads in part as follows.

13 It is a long section, but the pertinent
14 portion will read as follows. It says:

15 "Except as authorized by this sub-
16 chapter, it shall be unlawful for any person
17 knowingly and intentionally to distribute or
18 possess with intent to distribute a controlled
19 substance."

20 Now, what is a controlled substance? A
21 controlled substance as used in the statute is
22 nothing more than a drug or a substance
23 mentioned in one of the schedules set forth in
24 Section 812 of Title 21 of the United States
25 Code.

2

[Charge of the Court

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2
3 Cocaine is set forth in Schedule 2 of
4 this section. In other words, the statute
5 prohibits definitely the unlawful possession,
6 with intent to distribute, or the unlawful
7 direction of cocaine hydrochloride, with know-
8 ledge that it is cocaine. It makes no differ-
9 ence how small an amount of cocaine is involved.
10 The statute prohibits the knowing distribution
11 of any amount of cocaine, however small the
12 amount may be.

13 Now, it is also to be noted that the
14 prohibition in the statute is not limited
15 to the sale of cocaine but prohibits the distri-
16 bution of cocaine. Consequently, one may violate
17 the statute by distributing cocaine without
18 receiving any money or other consideration
19 therefor.

20 In other words, the statute prohibits
21 any unlawful and knowing distribution of
22 cocaine in any manner.

23 Now, referring to the illegal possession
24 with intent to distribute a controlled substance,
25 such as cocaine hydrochloride, as charged
in Counts 2 and 3 of the indictment, referring

3

[Charge of the Court

only to Dennis Mayer, Section 841-A-1 of Title 21, which I have just -- of United States Code, which I have just read to you, provides it shall be unlawful for any person knowingly or intentionally to distribute or to possess with the intention to distribute a controlled substance such as cocaine hydrochloride.

Now, the elements of the offense as charged in Counts 2 and 3 of the indictment are, one, that the defendant distributed or possessed a narcotic controlled substance such as cocaine with intent to distribut. And two, that he did so intentionally, willfully and knowingly.

So, the burden is upon the Government to prove, beyond a reasonable doubt, both of these elements. That is, possession with intent to distribute or actual distribution and knowledge that it was cocaine. So the burden is upon the Government to prove both of these beyond a reasonable doubt, both of these elements, and failure to prove either element is fatal to the prosecution and will entitle the defendant Mayer to an acquittal.

[Charge of the Court

1
2
3 Now, let us return to Count 1, which
4 is the conspiracy count. It charges the
5 defendants Mayer and Rubin with combining and
6 conspiring with one Mitchell Sorkin and
7 Anthony Lawless to knowingly and intentionally
8 distribute quantities of cocaine hydrochloride,
9 in violation of Section 841-A-1 of Title --
10 United States Code, which I have just read to
11 you.

12 Now, Section 846 of Title 21 of the
13 United States Code specifically provides that
14 -- and I quote -- "Any person who attempts" --
15 "who attempts or conspires to commit any offense
16 defined in this sub-chapter, which includes
17 this Section 841-A-1, shall be subject to the
18 same punishment as proscribed for the offense
19 i-self."

20 The crime of conspiracy, as charge in
21 this indictment is a separate and a distinct
22 crime. The conspiracy is something apart from,
23 and independent of, the offenses emphasized
24 within its unlawful object. That is, the
25 offense of actually possession or distributing
cocaine knowing that it is cocaine.

4 [Charge of the Court

Now, let us return to Count 1, which is the conspiracy count. It charges the defendants Mayer and Rubin with combining and conspiring with one Mitchell Sorkin and Anthony Lawless to knowingly and intentionally distribute quantities of cocaine hydrochloride, in violation of Section 841-A-1 of Title -- United States Code, which I have just read to you.

Now, Section 846 of Title 21 of the United States Code specifically provides that -- and I quote -- "Any person who attempts" -- "who attempts or conspires to commit any offense defined in this sub-chapter, which includes this Section 841-A-1, shall be subject to the same punishment as proscribed for the offense i-self."

The crime of conspiracy, as charge in this indictment is a separate and a distinct crime. The conspiracy is something apart from, and independent of, the offenses emphasized within its unlawful object. That is, the offense of actually possession or distributing cocaine knowing that it is cocaine.

[Charge of the Court

61-E
Now, the essence of the crime, in this case, is the unlawful agreement, the unlawful agreement among the parties to commit an offense in violation of Section 841-A; that is, to knowingly and intentionally distribute quantities of cocaine.

Now, frequently the crime of conspiracy is accompanied by an overt act to effect its unlawful object. The accomplishment of the unlawful object of the conspiracy is not essential to the crime itself. The essential element of the crime of conspiracy to violate Section 841-A of Title 21 of the United States Code, otherwise stated, is simply the unlawful combination of two or more persons, pursuant to an unlawful agreement or a common understanding, to commit the offense of knowingly and intentionally distributing quantities of cocaine.

Now, there is no crime in the absence of such an agreement or understanding. Sometimes a conspiracy is accompanied by an overt act in furtherance of the object or the purpose of a conspiracy. Under this statute,

6

[Charge of the Court

however, such an overt act is not necessary to be proven, even though there was in this case evidence offered by the Government of an overt act or acts. There is no requirement that the conspiracy agreement be a formal agreement, in which the unlawful objects of the conspiracy are explicitly stated.

Now, such a requirement would render proof of the agreement most difficult, if not impossible. It is sufficient that the minds of the parties meet understandingly on their common purpose to commit the offense. The agreement is usually, if not always, an implied agreement. That is, a mere common understanding among the parties to accomplish by a concerted action the unlawful object of this conspiracy. Such an agreement is generally a matter of inference deducted from the acts of the persons accused, done in pursuance of their apparent criminal purpose.

Now, with respect to the alleged conspiracy, you must first determine from all the evidence in the case relating to the period embraced in the indictment whether or not a

7

[Charge of the Court

1
2 conspiracy as I have defined that term existed.
3 I think we had some testimony from Mr. Mayer
4 that he agreed to take 20 per cent of the
5 residual commissions or royalties of a book
6 or articles that were to be written by Mr. Rubin
7 on the subject of narcotic drugs and its
8 effect upon man's sexuality.

9 Now, there is no question that according
10 to this testimony, as I understand also other
11 testimony, that there was some understanding
12 between the parties. But they claim they didn't
13 know that this substance was cocaine, and I
14 think you must take that into consideration
15 when you review the evidence. Their defense
16 is definitely that they did not know that this
17 was cocaine.

18 Now, if you decide that a conspiracy
19 did exist, you must next determine as to each
20 defendant involved whether or not he was a member
21 of the conspiracy. In determining whether or
22 not a particular defendant was a member of a
23 conspiracy, you must do so by evidence as to
24 that particular member's own conduct. That
25 is, evidence of what he himself said or did,

8

[Charge of the Court

and in this connection, you must not consider the evidence of what others said or did. In other words, you must determine the membership of the particular defendant in the conspiracy from the testimony of witnesses concerning that particular defendant's own actions and conduct and statements.

However, once you have determined that a particular defendant was a member of the conspiracy, using this test, you may then consider as if made by him the statements and declarations of the other co-conspirators made thereafter, in furtherance of the conspiracy and during the existence of the conspiracy.

The guilt of a defendant, once he is proven to be a member of the conspiracy, may be established by the acts of his fellow conspirators during and in furtherance of the conspiracy, without proof that the particular defendant did ever act constituting the offense. But mere association or an acquaintance of one defendant with another is not -- does not establish the existence of a conspiracy.

[Charge of the Court

1 9
2 However, one may be guilty of a
3 conspiracy to commit a crime even though he
4 did not himself actually participate in the
5 commission of the crime itself. As I said
6 before, one can be guilty of agreeing or con-
7 spiring to commit a crime even though the
8 crime itself was never committed. But you
9 must look at the evidence as it relates to
10 each individual defendant.

11 Now, there is upon the Government the
12 burden of proof beyond a reasonable doubt that
13 each defendant against whom the charge of
14 conspiracy is made was a party to the conspiracy.
15 To find a defendant guilty of conspiracy, you
16 must find that he participated in the agreement
17 of conspiracy.

18 For your assistance I shall try briefly
19 to outline the contentions of the Government
20 and the defendants as indicated by the evidence.
21 It will simply be a skeleton outline. I will
22 not attempt to summarize all of the evidence
23 or refer to every witness. The fact that I
24 omit reference to some of the evidence or to
25 some witness is not because I disregarded

1
2 this evidence or the testimony but because
3 time will not permit me to give you such
4 a complete survey.

5 I am only attempting to give you a
6 very brief outline and you must understand
7 by this that I do not express, directly
8 or indirectly, subtly or otherwise, by
9 inclination or gesture, any opinion concern-
10 ing any of the facts in this case.

11 My recollection of the evidence must
12 be disregarded by you if it is not in accord-
13 ance with your recollection, because it is
14 your recollection of the evidence that counts
15 in this case. If I happen to make an inaccurate
16 reference to some of the testimony, you are
17 to disregard that reference completely.

18 As to the Government's contention, the
19 Government contends through its witnesses,
20 Jeffrey Weber, who was a chemist, and
21 Michael Serges, who is also a chemist, and by
22 Special Agents Lawrence McElynn and Thomas
23 Sheehan, that these two defendants conspired
24 together to sell quantities of cocaine and
25 that in fact the defendant Dennis Mayer actually

[Charge of the Court

1 11
2 delivered to the Government agents samples on
3 two occasions of cocaine. Two or three. I
4 don't recall.

5 The testimony of McElynn and Sheehan
6 was also to the effect that the defendant
7 Joseph Rubin -- you see, there are three
8 samples all together now. That Joseph Rubin
9 delivered a sample of cocaine in his Manhattan
10 apartment at 30 Fifth Avenue, but Joseph Rubin
11 is not charged with the substantive count
12 of distributing cocaine. He is only charged
13 with conspiring to distribute cocaine.

14 Now, it appears, according to the
15 Government's case, that on or about March 21, 1972,
16 Special Agent McElynn got in touch with one
17 Anthony Lawless for the purpose of purchasing
18 cocaine as an undercover agent. That Lawless
19 put him in touch with one Mitchell Sorkin, who
20 in turn put him in touch with Dennis Mayer, and
21 that McElynn and Sorkin met Lawless at Cleanland
22 -- that's in Rego Park, Queens, and that after
23 one sample was tested and consumed, another
24 sample was finally delivered by Lawless to
25 McElynn, who retained the sample, which sample

12

[Charge of the Court

contained cocaine and was introduced into evidence as Exhibit 2.

As I recall the evidence, this sample had been given by Mayer to Sorkin who in turn gave it to Lawless who in turn gave it to McElynn. Then a discussion was had with respect to the amount of the sample available for purchase and the price thereof.

The testimony offered by the Government was to the effect that Lawless stated that this cocaine was available at \$1,000 an ounce, and that Lawless received the sample from Sorkin and Mayer admitted that he had given Mr. Sorkin the sample.

Now, at this point the Government's car, I think it was a Cadillac, a green Cadillac, with McElynn and Sheehan in it, followed the black Mustang driven by Lawless in which both Lawless, Sorkin and Mayer were traveling.

Now, the black Mustang stopped between Cleanland and Q Cozy Restaurant. McElynn, the undercover agent, then went into the black Mustang driven by Lawless and Lawless in turn went into the Government's car. In the black

13

[Charge of the Court

Mustang, McElynn talked to Sorkin and Mayer said that he could sell four and a half ounces of cocaine for \$3,900, the substance of which McElynn had already had a sample.

McElynn stated that he only wanted to purchase an ounce. They then went to Q Cozy Restaurant in Queens, where McElynn walked with Mayer into the restaurant, the cars being parked outside.

McElynn said he saw Mayer talk on the telephone. Mayer then came out and told McElynn that his people wanted to sell four and a half ounces and that they would not sell one ounce of cocaine.

McElynn talked to Mayer on March 27th thereafter, and made an appointment to see Mayer at the Red Wagon Restaurant on March the 30th, at which time McElynn and Sheehan met Mayer.

Another discussion followed about purchasing a pound of cocaine for \$9,000 and that Mayer was to go to Florida in connection with this purchase.

(Continued on next page.)

DS folls.

1
2 am #1

DDS/elc 2

[Charge

Tr. p. 642]

THE COURT: (Continuing) At this time,
Mayer delivered another sample of cocaine, which
was Exhibit 6. McElynn stated that his sample
was pretty good. Mayer then said he was going
to California, and that Rubin would take over
and handle this business of selling cocaine
while he, Mayer, was away, and that McElynn
would contact Joseph Rubin at 30 Fifth Avenue.

Mayer gave McElynn Rubin's telephone
number.

Thereafter on March 31st, McElynn
received a call from Rubin, who said that he
had samples of cocaine in his apartment, and
that at the time Rubin mentioned, the Florida
trip.

McElynn and Sheehan then went to Rubin's
apartment about 8:00 p.m. on that day, where
they happened also to see a young lady by the
name of Diane.

At that time, Rubin in his apartment
gave McElynn a sample of cocaine, which was in-
troduced into evidence as Exhibit 4.

Rubin said that Jerry was going to Flori-
da to pick up coke, and that McElynn and Sheehan

A-29

2

[Charge

Tr. p. 643]

could go along to test the coke.

Rubin also said there was another person going to California.

After McEllynn left Rubin's apartment, McEllynn called Mayer to tell him that everything was okay.

Subsequently Rubin said he was no longer going to have any further contact in connection with the cocaine business. He told that to McEllynn.

When Mayer returned from California on April 13th, 1972, Agent McEllynn again talked to him on the phone, and Mayer said that he had some trouble with the Florida people, and that he, Mayer, would get in touch with McEllynn later, but Mayer never did.

Now, as to the defendants' case, the defendants deny they knew that the samples that were delivered to McEllynn by either Rubin or Mayer contained cocaine.

They deny they ever conspired to sell cocaine.

They took the stand, then, and they testified in effect that Rubin was a writer.

3 1
2 He had written various articles for publication,
3 and that he was in the process of obtaining
4 material for a series of articles involving
5 drugs, and that was why he was talking with
6 McEllynn and Sheehan, whom he believed were
7 pushers.

8 And he testified he never met Lawless or
9 Sorkin. And you will also recall that he tes-
10 tified concerning his writings and his plans
11 to write other articles and a book in connection
12 with drugs.

13 And to the fact that he obtained the
14 sample he delivered to the agents from Dennis
15 Mayer. He said that it was supposed to be pro-
16 caine and sugar and not cocaine. And that Mayer
17 had received it, the sample, from one Celine
18 Oppenheim of East 67th Street.

19 And that Rubin knew that the substance
20 would pass the color test, but that the blue
21 color test didn't mean that the substance con-
22 tained cocaine, because a procaine test would
23 produce the same color.

24 Rubin then mentioned the first names
25 of some people he talked to in his investiga-

4 1
2 tion and research transactions for information
3 on drugs for his various articles to be
4 published.

5 Rubin testified that he never knew
6 that any of these samples or that this partic-
7 ular sample that he gave to the agents contained
8 any cocaine at all.

9 You will recall that there were three wit-
10 nesses who took the stand on behalf of Rubin.
11 One was Nancy Weber, Robert Goldsoff, and one
12 Harold Steinberg, who are in the publishing
13 field business, and they testified that they
14 had discussions with Joe Rubin concerning arti-
15 cles to be written by him for their publica-
16 tions, which involved narcotics or drugs.

17 I think the name, the subject matter of
18 one of those publications was . sort of out-
19 lined in one of the exhibits. I think the
20 title was, "The Effect of Narcotics on Human
21 Sexuality."

22 Then Mr. Mayer took the stand and tes-
23 tified, among other things, that he lived with
24 Joe Rubin. And he agreed to help Joe Rubin in
25 obtaining information for Joe Rubin's articles

1
2 on drugs. That in return therefor, he was to
3 get twenty percent commission or twenty per-
4 cent of residual royalties on the articles
5 when the articles were published, if they
6 were.

7 He also testified as to the meeting
8 with McElynn and Sheehan in Queens, including
9 the meeting at the Q-Cozy Restaurant, the
10 Red Wagon Restaurant, as to the delivery of
11 samples, which were admitted into evidence.

12 He stated that he obtained these samples
13 in five small envelopes from a Mrs. Celine Op-
14 penheim of East 67th Street. And that the pow-
15 dery substance in these envelopes, Mrs. Oppen-
16 heim told him, did not contain cocaine, but
17 could pass as cocaine on the street.

18 That he at no time knew that the sub-
19 stances contained cocaine. That he was simply
20 trying to obtain information for Rubin's
21 literary efforts on drugs or his article on
22 the "Effect of Drugs on Human Sexuality."

23 And that no money was received, either
24 by him or Rubin, for the samples of cocaine
25 that he delivered.

Now, I have made this brief statement for the sole purpose of giving you some idea of the opposing contentions.

Now, if I have incorrectly referred to testimony or evidence in this statement, please disregard any misstatement or error on my part.

And there is no intention at this time or at any time during this Charge to try to repeat to you what all the testimony was.

It will be your recollection of the testimony that will govern in your deliberations.

My recital of the respective contentions of the parties, I repeat, is not an indication of any opinion on my part.

If the attorneys or any of them have misstated the testimony, you disregard that misstatement of the testimony.

Again, I advise you that it will be your recollection of the testimony that is going to control, in this case.

I think perhaps the key issue in this case is whether these defendants had knowledge

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Tr. p. 648]

that these samples contained cocaine, and whether in actuality they conspired to deliver cocaine and not procaine.

It is obviously impossible, ladies and gentlemen, to ascertain or prove directly what a man knew or intended. You and I cannot look into a person's mind and see what his intentions were or what his knowledge was. Physically, that is impossible.

But a careful and intelligent consideration of the facts and the circumstances shown by the evidence in any given case, as to a person's actions and statements, enables us to infer with a reasonable degree of certainty and accuracy what his intentions were in doing or not doing certain things, and what was the state of his knowledge.

Knowledge, as I say, may be inferred from the acts of the parties. And it is a question of fact to be determined from all the circumstances.

And the jury may scrutinize the defendants' entire conduct at the time that the offenses were committed.

Of course one may not willfully and intentionally remain ignorant of a fact which is important and material in his conduct.

The test is whether there was a conscious purpose here to avoid enlightenment.

However, mere suspicion that something is wrong or improper is not equivalent to knowledge, nor is it equivalent to an intention.

The proof of the element of knowledge and intent may rest, as it frequently does, on evidence of facts and circumstances from which it clearly appears that the only reasonable and logical inference is that the accused had knowledge of the illegal possession of cocaine.

But circumstantial evidence sufficient to support a charge of knowledge of illegal possession with intent to distribute must be sufficiently persuasive to exclude an inference of innocence.

Now, the government's case against these defendants rests on both direct and circumstantial evidence.

As to the subject of circumstantial evidence, circumstantial evidence is evidence

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2 of a fact from which you may infer the existence
3 or non-existence of another fact.

4 For example, if a person comes into your
5 home wearing a raincoat which is wet and carry-
6 ing an umbrella which is wet, now that would
7 be circumstantial evidence that it is raining
8 outside, although you didn't otherwise know
9 it was raining.

10 Or, to give you another illustration,
11 perhaps a little closer to home, which is
12 here in the courtroom, suppose a member of the
13 jury were to ask one of the court clerks,
14 and we will call him Clerk No. 1, for a pad
15 and pencil to make some notes, and suppose that
16 after you took your recess, you came back and
17 another court clerk, and we will call him
18 Court Clerk No. 2, not the one to whom the
19 member of the jury first spoke, were to
20 hand this juror a pad of paper and pencil.
21 Now that would be circumstantial evidence that
22 the first Court Clerk, No. 1, had given the
23 juror's message to the second Court Clerk,
24 No. 2.

25 That is the only inference you could
draw. That is circumstantial evidence.

As the words indicate, circumstantial evidence means evidence involving the circumstances surrounding the incident and the details, as distinguished from direct personal observation. It is more than and it is fundamentally different from mere conjecture or surmise.

For under our law, no man is to be convicted on the basis of guesswork or speculation.

Now, an inference that is reasonably drawn from the facts that have been testified to is evidence.

In analyzing the evidence, you may draw reasonable inferences based upon your own common sense and your own general experience from any facts that you find were proven.

While an inference may be drawn from a proven fact, it may not be drawn from another inference.

When two inferences may be drawn from a proven fact, one which is consistent with guilt and the other consistent with innocence, why, you must draw the inference of innocence.

1
2 Now, a logical inference is to be dis-
3 tinguished from sheer speculation or mere
4 suspicion.

5 Circumstantial evidence is legal and
6 acceptable evidence. It is that evidence which
7 tends to prove a disputed fact by proof of
8 other facts which have a legitimate tendency
9 to lead the mind to a conclusion that the
10 fact exists which is sought to be established.

11 Circumstantial evidence may consist of
12 an accumulation of many details which are so
13 logically interrelated, and so consistent with
14 each other, and so inherently probable that
15 you may not have the slightest doubt as to its
16 truthfulness and accuracy.

17 As a general rule, the law makes no
18 distinction between direct and circumstantial
19 evidence. Circumstantial evidence may be enough
20 to convict. But the circumstantial evidence
21 must be so convincing that it leaves you with
22 no reasonable doubt.

23 If you have a reasonable doubt after
24 you consider all the circumstantial and other
25 evidence in this case, as to either or both of

2 these defendants, you must acquit him or both
3 of them, as the case may be.

4 Now, in this case the defendant, Joseph
5 Rubin, and Dennis Mayer took the stand.

6 Now, a defendant does not have to take
7 the stand. They testified in their own behalf.
8 Now a defendant who wishes to testify is a
9 competent witness and his testimony should
10 not be disbelieved merely because he is a de-
11 fendant.

12 On the other hand, in weighing his
13 testimony, you may consider the fact that
14 the defendant has a vital interest in the
15 outcome of the trial.

16 So we now come to the credibility of
17 witnesses, which I think, perhaps, is the
18 most important subject I have to discuss.

19 It is very difficult, in this respect,
20 because it depends upon your own experience.

21 Now, in considering evidence, you will
22 exercise the exclusive function of passing
23 upon the credibility of the witnesses.

24 Now, you can see this is a very import-
25 ant function because to determine where the

truth lies, you must of necessity decide who is telling the truth.

Now, how you do this is left to your own determination. Among other things, in determining the credibility of a witness, the jury may consider his motive in testifying, consider his manner and demeanor on the witness stand, you may consider his interest and his prejudice or bias, if any, and whether he has a purpose or interest to serve which might color his testimony.

Interest, however, doesn't necessarily mean that a witness is untruthful. It is merely an element that you may consider in reaching your determination upon the question of whether or not he is telling the truth.

You may also consider whether a witness had a means of knowing what he was testifying to. You may also consider the inherent probability or the improbability of his testimony, and the consistency or inconsistency of any of his statements, and the reasonableness or the unreasonableness of his testimony viewed in the light of all the circumstances surround-

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2 ing this testimony.

3 Another consideration is whether any
4 witness was contradicted by any other credible
5 evidence, and whether he made statements at
6 other times which contradicted or were contrary
7 to the statements he made on the witness stand.

8 Now, the jury is not bound to believe
9 inherently improbable or unreasonable statements
10 simply because the witness who made them was
11 under oath. The jury has a right in appraising
12 a particular witness's credibility, as to
13 or part of his testimony to consider the prob-
14 ability or improbability of that testimony
15 when viewed in light of all the circumstances
16 and other evidence in the case.

17 The jury is not bound to believe unreason-
18 able statements just because they are sworn to.
19 For we know that anyone can swear to anything
20 if he has the will to do so.

21 Now, if there has been any conflict in
22 the testimony of a witness, it is your duty
23 to try to reconcile these conflicts if you can
24 possibly do so.

25 We have in this case, I think, the two

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chemists who took the stand and testified as
3 to the contents of the samples.

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Now this to some extent was opinion
evidence. You can consider these expert
opinions, which were received in evidence, and
give it such weight as you may think it
deserves.

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If you should decide that the opinion
of an expert witness is not based upon suffi-
cient education and experience, or you should
conclude that the reasons given for support of
his opinion are not sound, you can reject that
opinion entirely.

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Now, it is for you to determine whether
a witness, whoever he may be, is telling the
truth as to all of the facts or only with
respect to some of the facts.

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The test as to whether you believe a
witness is the same which you would apply in
your everyday business and in your home affairs,
where you are called to make a similar deter-
mination almost every day.

24

25

Do not think, members of the jury, that
when you came into this jury box and you were

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2 sworn as jurors, that it was supposed that you
3 lay aside your business, your common sense, or
4 your everyday experience.

5 Now, that is simply not so. You are now
6 being called upon, indeed, to use that business
7 and everyday experience, and your common sense,
8 to assist you in determining where the truth
9 lies in this case.

10 You are the exclusive judges in deter-
11 mining where the truth is and who is telling
12 the truth.

13 Now, you have been chosen and sworn as
14 jurors in this case, to try the issues present-
15 ed by the allegations of the indictment and
16 the denial made by the not guilty plea of each
17 of these defendants.

18 You are to perform this duty without
19 bias or without prejudice as to any party.
20 The law does not permit jurors to be governed
21 by sympathy or by prejudice or by public
22 opinion. You must not permit any plea of sym-
23 pathy to enter your verdict.

24 The accused and the public expect that
25 you will carefully and impartially consider all

1
2 sworn as jurors, that it was supposed that you
3 would lay aside your business, your common sense,
4 or your everyday experience.

5 Now, that is simply not so. You are now
6 being called upon, indeed, to use that business
7 and everyday experience, and your common sense,
8 to assist you in determining where the truth
9 lies in this case.

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11 mining where the truth is and who is telling
12 the truth.

13 Now, you have been chosen and sworn as
14 jurors in this case, to try the issues presented
15 by the allegations of the indictment and
16 the denial made by the "Not Guilty" plea of each
17 of these defendants.

18 You are to perform this duty without
19 bias or without prejudice as to any party.
20 The law does not permit jurors to be governed
21 by sympathy or by prejudice or by public
22 opinion. You must not permit any plea of sym-
23 pathy to enter your verdict.

24 The accused and the public expect that
25 you will carefully and impartially consider all

the evidence and follow the law as stated by the Court and reach a just verdict regardless of the consequences.

And now in conclusion, let me say again that it is your duty to weigh the evidence carefully, dispassionately, calmly, and to reach a conclusion about the case as to the facts, which are wholly within your finding.

Now the only question for your consideration is whether the defendants are guilty or innocent of the offenses for which they are now on trial.

If you are satisfied beyond a reasonable doubt that they are guilty, it is your plain duty to convict them.

If you have a reasonable doubt about the matter, it is equally your plain duty to acquit them.

You must look at the evidence with respect to each defendant separately.

The punishment provided by law is a matter exclusively within the province of the Court. You cannot and you should not allow consideration of any punishment which may be imposed

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2 on the defendants to influence you in arriving
3 at an impartial verdict as to the guilt or
4 innocence of the defendants.

5 It is for the Court to determine any
6 mitigating or any other special circumstances
7 which may require consideration in the case.

8 So you are not to be concerned with
9 the question of punishment.

10 Now, ladies and gentlemen, all twelve
11 of you must agree, whichever way you find. In
12 other words, your verdict must be unanimous.
13 You must take each count of the indictment
14 separately and you must determine the guilt or
15 innocence of each defendant with respect to
16 the counts in which he may be charged.

17 Now, the form of your verdict will be,
18 "We the jury find the defendant, Joseph Rubin,
19 not guilty on Count One," or, "We the jury find
20 the defendant, Joseph Rubin, guilty on Count
21 One."

22 And the same with the defendant, Dennis
23 Mayer, as to Count One.

24 Now, of course, you know that Joseph
25 Rubin is not included in Counts Two and Three.

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2 If you go to Counts 2 and 3, they
3 involve only the defendant, Dennis Mayer.

4 If you wish any testimony of any wit-
5 ness to be read to you, or if you have any
6 further questions, please send a note to the
7 marshal, who will relay your request to me.

8 Now, as I indicated, jury service is
9 not always pleasant and it is rarely convenient.
10 However, jury service is one of the key-
11 stones of our system of American justice in
12 a democratic form of government. And I want
13 to thank each and every one of you for your
14 outstanding devotion as citizens to this
15 important task as jurors.

16 So may you, acting in accordance with
17 the evidence and the law, by your verdict
18 declare the truth and proclaim the cause of
19 justice and righteousness in this case.

20 You may want to examine any exhibits.
21 If you do, they will be delivered to you upon
22 request. And if, after you have retired, you
23 desire to be informed on a point of law arising
24 in the case, or have any part of the testimony
25 clarified, you should ask to be returned to

the courtroom for further instructions.

Now at this point I will take a five-minute recess, in order that I may hear any applications made by counsel. So I will request you not to consider this case until you are brought back at the end of this short recess.

All right.

(The jury whereupon retired from the courtroom at 12:10 o'clock p.m.)

THE COURT: All right, do we have any objections or requests?

MR. MELTZER: Your Honor, I would like to take one exception.

THE COURT: All right.

MR. MELTZER: I would like to take one exception. And I think there is one thing that needs a little clarification.

The exception, for the record, is, I respectfully except to so much of your Honor's charge as charged in substance that a defendant or defendants may not intentionally remain ignorant of an important fact. I believe that when your Honor charges substantially that it

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2 THE COURT: You can look at your notes, yes,
3 but I don't know what this has to do with this
4 case --

5 MR. SMITH: Your Honor --

6 THE COURT: He has long experience as a
7 writer, and if he wants to say he is a writer and
8 has written certain articles, all right, but I
9 don't know what relevancy it has.

10 MR. SMITH: Well, I will ask your Honor's
11 indulgence at this time, subject to connection
12 later when it becomes apparent what I am driving
13 at.

14 THE COURT: All right, all right.

15 A I worked for the International News Service in 1955,
16 I was an editor at Pines Publication in and around the same
17 time; I was a staff writer --

18 THE COURT: You are too fast.

19 You were an editor of Time?

20 THE WITNESS : Pines Publications, they put
21 out a series of magazines for popular --

22 THE COURT: You were an editor of this
23 Time Magazine?

24 THE WITNESS: No, it is Pines Publications,
25 P-i-n-e-s.

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2 A I was a science editor of the Crowell-Collier's
3 Encyclopedia in 1962.

4 I was also science editor at McGraw-Hill's encyclopedia,
5 Science Technology, in 1965.

6 I was an article writer for the Columbia University
7 Press in 1960, and I also worked on the Columbia University
8 Press Encyclopedia.

9 THE COURT: That is your background?

10 THE WITNESS : Also in some staff positions,
11 your Honor, and some of them were free-lance
12 positions.

13 THE COURT: All right.

14 A (Continuing) On a regular basis I wrote articles --

15 Q Again, I must ask you to slow down and speak so
16 that everyone in the jury can hear you clearly, please.

17 A In 1956 on a regular basis I wrote for a medical
18 publication called Medical World News, which is directed towards
19 general practitioners.

20 I wrote over 80 articles for the Crowley Company that
21 puts out an encyclopedia and other educational material.

22 I wrote articles for Science News Service in 1962 and
23 1963, and I have written articles of a general nature for
24 Pageant, Coronet, Odyssey, Escapade, etc.

25 THE COURT: You are a writer.

I think we have had enough now.

THE WITNESS: There is one other thing of importance; for two and a half years I worked for a television show called Matinee Theater; I wrote original scripts and I also re-wrote scripts.

This dates back from 1958 to 1960.

THE COURT: All right, now we have your background.

BY MR. SMITH:

Q In the course of your writing, did you ever become interested in drugs?

A I did, I have been writing about drugs for a long time, dating back to the late '50s when I wrote articles on drugs for various magazines.

Q Now in 1972 did you engage in any intensive study or research in connection with drugs?

A I did indeed.

Q What was the nature of that research?

A I am also doing a book on narcotics and human sexuality.

THE COURT: On what?

THE WITNESS: Narcotics and human sexuality.

THE COURT: What does that have to do with drugs?

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2 THE WITNESS: A considerable section of that
3 book is devoted to the aspect of licit and illicit
4 drugs on human sexuality, that is for example the
5 amphetamines, what their effect might be or might
6 not be on one's sexual behavior.

7 THE COURT: All right.

8 MR. SMITH: Now I would like to have marked
9 as Defendant's Exhibit A for identification a
10 document.

11 THE CLERK: Defendant's Exhibit A marked
12 for identification.

13 THE COURT: Let me see it, please.

14 (Document handed to his Honor.)

15 THE COURT: I think you are not going to
16 get very far.

17 THE WITNESS: That is the wrong outline.

18 MR. SMITH: That is the Chelsea book.

19 THE WITNESS: That is the Chelsea book,
20 not the Times book.

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22 (continued next page)
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Q You testified that you were currently working on a book that stems, does it not, from some other work that you had previously undertaken?

A Right.

Q I ask you to look at Defendants' Exhibit A for Identification and ask you if that refreshes your recollection about the earlier work.

A It does. In about October of 1970 --

" THE COURT: No, this is all irrelevant, we are not going into his productions as a writer.

The issue here is whether or not he was engaged in a conspiracy to sell drugs, period.

MR. SMITH: That is correct.

THE COURT: I am not interested in, and I am sure the jury is not interested in that, and we are not going to have a red herring across the trail.

MR. SMITH: May we approach the bench, your Honor?

THE COURT: Yes.

(The following occurred at side bar without the hearing of the jury.)

MR. SMITH: This has a direct bearing --

THE COURT: It does not have.

1 2
2 You say that he wrote a book about drugs,
3 but that one --

4 MR. SMITH: This book was originally sub-
5 mitted and the editor --

6 THE COURT: Not so loud.

7 MR. SMITH: The editor will testify, he
8 will say we wanted more on drugs than in this par-
9 ticular book. They tried to flesh this out --

10 THE COURT: You say they tried to what?

11 MR. SMITH: They tried to flesh this out.

12 THE COURT: You just ask him whether or
13 not an editor told him to do that.

14 You can see what is happening. All we
15 are talking about here is what he wrote and every-
16 thing else, and I am not going to permit that.

17 MR. SMITH: We are not going to go into
18 all of that.

19 THE COURT: There is one issue here and
20 you get down to the issue.

21 We are not going to go into his ability
22 as a writer, any more than I would permit anyone
23 else to go into the background and the old history
24 of a man's life when that is not at issue.

25 The only issue here is did he or did he

not conspire to sell drugs.

Now, if you want to say he did not and then explain -- I don't know what your defense is, but is it that he might have talked to this man in connection with a book that he was writing; is that it?

MR. SMITH: That is it exactly.

THE COURT: Then you don't have to go into all this.

MR. SMITH: What we have to show here is what he was attempting to learn. This contrast failed because he didn't have enough background in the material.

THE COURT: You can ask him general statements then, that is all right, but you are not going to go into all of this business.

MR. SMITH: Of course not.

THE COURT: I have seen the exhibit showing it to be an index of, oh, civil liberties, ecology --

MR. SMITH: That has nothing to do with this matter.

THE COURT: That is exactly why I said that you seem to be drawing a red herring across

the trail.

MR. DePETRIS: Might I interject at this point?

If he is going to say that he was researching a book, well, that has absolutely nothing to do with the fact that he distributed cocaine.

MR. SMITH: We will come to that, it is just one --

MR. MELTZER: It is an important part of our defense, your Honor.

THE COURT: You are going to go right to the point.

MR. MELTZER: Yes, we will.

MR. DePETRIS: All of this is irrelevant.

MR. SMITH: I understand -- well, you feel it is irrelevant, we feel it is very relevant.

THE COURT: You can ask a general question if it is explanatory of his reasons.

All right.

(The trial then continued within the hearing of the jury.)

THE COURT: I might have misled you when I spoke of a red herring across the trail. I

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2 didn't mean it in that way, I simply meant to
3 indicate that some of this is irrelevant. I don't
4 believe the defendants are trying to draw a
5 red herring across the trail, that was an unhappy
6 expression and I ask you to disregard it completely.

7 BY MR. SMITH:

8 Q Did the work which was represented in that
9 exhibit have a section concerning drugs?

10 A It did.

11 Q Now, what was the net upshot of the work that
12 you were working on at the time as represented by Defendant
13 Exhibit A for Identification?

14 A A number of people who saw it at submission told me
15 they would like to see the drug section expanded of the
16 book itself.

17 Q Did you attempt to do that?

18 A Yes, I did.

19 Q Will you please describe to the jury --

20 THE COURT: They asked you to attempt to
21 do what?

22 THE WITNESS: Expand the section on drugs,
23 the drug --

24 THE COURT: Expand the section, all right.

25 Q Will you please state to the jury --

6

THE COURT: What publication?

Q (Continuing) What efforts were made in this regard?

THE COURT: What kind of publication was it?

MR. SMITH: It was to be a book.

THE COURT: It was to be a book?

MR. SMITH: Yes, sir.

THE COURT: But it was not?

THE WITNESS: It was --

THE COURT: Wait a minute, wait.

Was it or was it not a book?

THE WITNESS: It was a book, the contract was signed in October.

THE COURT: But it was not published?

THE WITNESS: No.

THE COURT: Some people said they wanted you to expand the section on drugs in a book that was never published?

THE WITNESS: It was in the process of being written.

THE COURT: I know, but it was never published?

THE WITNESS: Correct.

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2 Q Why was it not published?

3 A I was in the process of trying to write the book.

4 Q What problem did you have in that connection?

5 A One of the problems I had was to get any real information
6 about drugs and drug abuse.

7 Q What efforts did you make to undertake that?

8 A I embarked on an extensive interviewing program,
9 speaking to people that might have knowledge, first-hand
10 knowledge about the drug industry in this country.

11 Q Did you speak to such people?

12 A Yes, I did.

13 Q And what was the result of these conversations?

14 A I couldn't get very much information, people were
15 either very nervous about talking to me, and some of the
16 ones that were aware of the Caldwell decision in that they
17 could be held accountable if they gave their names.

18 MR. DePETRIS: Your Honor, he is testifying
19 to all sorts of hearsay.

20 I still object to this because it is
21 irrelevant to the conspiracy.

22 THE COURT: Wait a minute.

23 He couldn't get sufficient information
24 talking to people --

25 THE WITNESS: Correct.

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2 THE COURT: I don't want your opinion as
3 to why --

4 THE WITNESS: This is what I was informed,
5 I was so informed in many cases.

6 THE COURT: It is still immaterial, I
7 don't want that.

8 THE WITNESS: Fair enough.

9 THE COURT: You just couldn't get it?

10 THE WITNESS: Correct.

11 THE COURT: You couldn't get the informa-
12 tion; is that right?

13 THE WITNESS: Correct, your Honor.

14 BY MR. SMITH:

15 Q What did you do next?

16 A One of the projects --

17 THE COURT: Although you tried?

18 THE WITNESS: I tried very extensively.

19 Q What did you do next?

20 A I met Donald Meyer.

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2 into this business of letting a witness go over
3 every other thing, you come into so many
4 irrelevancies that we lose track of the actual
5 issue.

6 So let us try to keep down to the issues
7 involved.

8 MR. SMITH: I will try to ask questions.

9 THE COURT: You are trying very hard,
10 Mr. Smith, no criticism.

11 You can lead.

12 BY MR. SMITH:

13 Q Did you decide that it would be necessary for
14 you to discover people who were selling and buying drugs?

15 A Yes.

16 Q What drug in particular did you have in mind?

17 A In particular, cocaine.

18 Q Why was this?

19 A For a number of reasons. Simultaneously I was also
20 working on a script with a gentleman by the name of Harold
21 Steinberg --

22 THE COURT: You were doing what with a
23 script?

24 THE WITNESS: This was a television
25 script for a television movie.

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THE COURT: All right, you were working
on a script for a television movie.

Q Did you have an outline for that script?

Yes, I did.

MR. SMITH: I will ask to have this
marked for identification, a script outline.

THE COURT: You may mark it.

THE CLERK: Defendant's Exhibit B marked
for identification.

Would you like to see it, your Honor?

THE COURT: Yes.

(Document handed to the Court.)

THE COURT: I don't see what this has got
to do with the issue here.

You know what the issue here is.

MR. SMITH: We are getting there.

THE COURT: Working on a script outline,
an outline of a script for some man named Steinberg.

THE WITNESS: With Harold Steinberg.

THE COURT: With him?

THE WITNESS: Yes.

THE COURT: This jury's not interested in
that. That is all irrelevant.

I want to know what he has to say about the

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2 charge in this indictment, so does the jury, I
3 don't care about his scripts and television --

4 MR. SMITH: Your Honor --

5 THE COURT: You can understand that.

6 MR. SMITH: It is the defense point that
7 this is a very material part.

8 THE COURT: Well, just ask him generally.
9 It might be a point but that doesn't make it
10 relevant to this issue.

11 MR. SMITH: This is as relating to the
12 issue of knowing and intentional violation.

13 THE COURT: Well, why don't you get right
14 down to the point and then maybe you can bring it
15 out in a different way, but as I see it, we are
16 going into his background and what his activities
17 were, and I am not interested in that. 9

18 (Continued on next page.)
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2 THE WITNESS: And --

3 THE COURT: Did he tell you how you could
4 got hurt?

5 THE WITNESS: No, he did not, your Honor.

6 THE COURT: All right.

7 Q Then what happened?

8 A And I think the -- he left a few more messages. He
9 might have or not have, but I never spoke to him again until
10 the time I was arrested five and a half months later.

11 Q And who arrested you?

12 A The two -- same two agents came to my apartment, five
13 and a half months later, and with a warrant for my arrest.

14 Q And in the meantime, what happened to your
15 researches on drugs and what-not?

16 A Well, I -- in two senses, it's still continuing. The
17 book I am doing for the Times right now, has a section of
18 about 60 pages.

19 THE COURT: No. You are still researching
20 for drugs. I am not interested.

21 THE WITNESS: I am still researching for
22 drugs.

23 THE COURT: Yes.

24 Q And were there any other -- you've seen
25 Defendant's Exhibit B for identification, this script? That

1
2 is the nature of this script?

3 MR. DE PETRIS: Your Honor, again I would
4 object to it, as far as relevancy.

5 THE COURT: What is the script?

6 MR. SMITH: This is Defendant's Exhibit B
7 for identification.

8 THE COURT: TV. I am not interested. The
9 jury is not interested in that. It's irrelevant.

10 MR. SMITH: May we approach the bench on
11 this, your Honor?

12 THE COURT: Yes. I think you did once
13 before.

14 (Silence discussion.)

15 THE COURT: Is that his fiance out in the
16 wall of the courtroom?

17 MR. SMITH: No, no. That's a law clerk from
18 the court.

19 THE COURT: All right.

20 MR. SMITH: She'll be testifying later.

21 THE COURT: Not so loud.

22 MR. SMITH: Excuse me.

23 The matter that we are concerned with here
24 is showing the intent of the defendants and --

25 THE COURT: You can ask him, were you having --

THE COURT: No.

But as it is, you have sat there. You
have made no objections whatsoever, have you?

MR. DE PETRIS: I objected twice, and you --

THE COURT: No. Go ahead.

(In open court.)

DIRECT EXAMINATION CONTINUED

BY MR. SMITH:

Q Did you ever entertain a proposal for TV
scripts about drug abuse?

A I did.

Q What year was that? What time was that?

A It was about November of 1971.

Q Did you discuss it with others?

A I did.

Q Whom did you discuss it with?

A My co-author, Harold Steinberg, and he in turn,
discussed it with a number of people.

THE COURT: Never mind. Never mind.

(Continued on next page.)

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2 drug business other than what they told me.

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3 Q Who?

4 A Who?

5 Q Yes, who?

6 A Many people that I have spoken to in the period of
7 six months.

8 Q Who?

9 A In most cases, I tried to find out their first name
10 only. In most cases their first name only was offered to me.

11 Q Would you please answer my question?

12 MR. MELTZER: Objection, your Honor. He
13 is answering the question.

14 THE COURT: No, he is not answering it
15 exactly. I will overrule the objection.

16 A I spoke to a Mike and a Bill.

17 THE COURT: A Mike and a Bill?

18 THE WITNESS: A Willie.

19 THE COURT: Who else, a Willie?

20 THE WITNESS: Jack.

21 THE COURT: Jack. No last names? No
22 last names?

23 THE WITNESS: They were -- generally --

24 THE COURT: The answer is yes or no.

25 THE WITNESS: No, no last names.

Q Mike, Willie?

THE COURT: Address? Give you addresses?

THE WITNESS: No.

Q Never?

A Never.

Q How were you supposed to contact these people?

A Sometimes --

Q If you were doing such great research --

THE COURT: Wait a minute. You have to let him answer. You ask a question and then you go ahead and proceed without letting him answer.

A In many cases they left a message for me and where to meet or they came up to my apartment. I generally -- often had people come up to my apartment. It seemed to decrease their nervousness in regard to the whole thing.

THE COURT: You see, it is these addendums that we are not interested in, whether --

THE WITNESS: He asked --

THE COURT: -- it decreased their nervousness or whether it did not decrease their nervousness. That is something we are not interested in at the present time.

THE WITNESS: Usually bars and occasionally my apartment.

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2 Q You said "usually bars" and occasionally your
3 apartment?

4 A Right.

5 Q Where else?

6 A Sometimes in the park. Sometimes at somebody else's
7 house.

8 Q Whose house?

9 A Some friends.

10 Q Who?

11 A Mrs. Oppenheim, for one, for example.

12 Q Mrs. Oppenheim?

13 THE COURT: Where did she live?

14 THE WITNESS: On East 62nd Street.

15 THE COURT: What's her first name?

16 THE WITNESS: Her first name is Celine.

17 I think it's C-e-l-i-n-e.

18 THE COURT: Celine?

19 THE WITNESS: Yes.

20 Q Let's go to Mrs. Oppenheim for a moment.

21 Did she know you were writing a book?

22 A Not really.

23 Q Well, then, why would you -- why did you ask
24 her for pictures?

25 A Her husband was -- I knew her husband and he was a

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cancer surgeon.

Q That doesn't answer my question. Why did you ask her for procaine?

A Because I assumed she had such. She had a lot of drugs in the house. She had access to her husband's prescription pad and she was -- had many, many drugs in the house.

Q So you were asking her to break the law?

MR. MELTZER: Objection, your Honor.

THE COURT: Yes. I will sustain that.

Q How --

THE COURT: You say she had many drugs in her house?

THE WITNESS: Yes, your Honor.

Q Had you ever seen any of the drugs?

A Every time I walked into the bathroom or her bedroom or the living room, there were a lot of drugs lying around.

THE COURT: What do you mean "a lot of drugs"? Cocaine, heroin?

THE WITNESS: No. Prescription drugs, your Honor.

THE COURT: Oh, prescription drugs. You are not talking about cocaine?

THE WITNESS: No. I am not, your Honor.

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THE COURT: You mean drugs that everyone
has in their cabinet in the bathroom? Is that
what you are saying?

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THE WITNESS: Correct, your Honor.

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Q If she had these kinds of drugs, prescription
drugs, why would she have procaine?

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A She often had many drugs that were -- were often
abused, things like dexidine and qualudes.

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THE COURT: What did she have? Dexidine?

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THE WITNESS: Yes, your Honor.

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THE COURT: And what else?

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THE WITNESS: Drug called qualude.
various amphetamines, many, many types of
amphetamines.

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THE COURT: They are not the ordinary
drugs we have in our cabinet in the bathroom,
are they?

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THE WITNESS: Well, some people legally
have them, your Honor.

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THE COURT: All right.

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Q Did you ask her to get the procaine?
A No, I did not.

Q But you thought it was procaine? Did you know

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that it was against the law to possess procaine?

MR. MELTZER: Objection, your Honor.

THE COURT: No, I will permit it.

A I was not aware of that fact.

Q Well, it is.

MR. MELTZER: Objection, your Honor.

THE COURT: I did not hear it. I did not hear his last question.

MR. DE PETRIS: I was informing him that it is.

MR. MELTZER: It is not a question.

THE COURT: That is not a question.

MR. MELTZER: If he is going to make that kind of statement, we ought to have clarified that that in no way --

THE COURT: No. We are not having a summation at the present time.

Q Now, let's move on to Mike. Where did you meet Mike?

A I met a Mike at a park one day, a fellow dog owner, Washington Square park.

Q Washington Square Park.

Do you know his last name?

A I do now.

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Q How did you meet him?

THE COURT: Wait a minute. What is his last name?

THE WITNESS: I think it's Kovalevich, or something like that.

THE COURT: What?

THE WITNESS: Kovalevich.

THE COURT: Kovalevich?

THE WITNESS: K-o-v-a-l-e-v --

THE COURT: Where does he live?

THE WITNESS: I think he lived -- he now lives on 15th Street off Eighth Avenue.

THE COURT: 15th Street off Eighth Avenue. You don't know the exact address?

THE WITNESS: I did have it. I was at --

THE COURT: How old is Mike?

THE WITNESS: Mr. Kovalevich? He's a young Korean War veteran. I think he's in his early twenties.

THE COURT: No. I asked how old he was. I didn't ask whether he's a Korean War veteran.

THE WITNESS: He's about in his early twenties, your Honor, I gather.

Q How did you happen to come to meet Mike?

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MR. SMITH: Your Honor, this line of questioning is --

THE COURT: No.

MR. SMITH: I was perfectly willing to --

THE COURT: No. He said he had these people, Mike, Willie. What are the names? Mike, Willie, what else?

MR. DE PETRIS: Jack.

THE COURT: Who else?

Mike, Willie? What's the other name?

There was another name?

THE WITNESS: I think it was Willie, your Honor. I met.

THE COURT: What?

THE WITNESS: I think I met a Bill, too.

THE COURT: Bill, Mike and -- well, that's the same as Willie, isn't it?

THE WITNESS: I think there was a Willie and a Bill, your Honor.

THE COURT: You had a Willie and a Bill and a Mike. That's three.

Okay.

Q A Jack?

A There was a Jack, too.

11

THE COURT: Oh. A Willie, a Mike --

THE WITNESS: Your Honor, I --

THE COURT: No, no -- you -- and a Jack.

All right.

Q Now, --

THE COURT: Next.

Q Would you tell us how you met Mike?

A We're both dog owners and we both walk our dog in Washington Square Park. We met many, many months ago, about a year ago, I guess.

Q And did you know he was a drug dealer?

A No, I did not.

Q Is he a drug dealer?

A Not to my knowledge.

Q Well, then, why did you have conversations with him about drugs?

A Because he said he knew people that were involved in the business.

Q Did you ever meet any people through him?

A Yes, I did.

Q People who dealt in drugs?

A So they claimed.

Q Who?

A We met one day at Riviera Bar.

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2 Q Pardon me?

3 A Or so she admitted to me.

4 Q You saw her afterwards and she said she had
5 given samples to Dennis to give to you?

6 A There was some discussion about what she gave Dennis.

7 Q What did she say she gave?

8 A She said it wasn't any good. She said it would pass
9 a test.

10 Q Wait a minute, you talk too fast. What is
11 that again?

12 THE WITNESS: She said it was no good,
13 by the fact of which I took to mean that it wasn't
14 cocaine. And that it would pass a test.

15 Q Would pass what test.

16 A A street test, a color test.

17 Q Color test. Well, didn't you say that Willie
18 tested it by tasting or snorting?

19 A Yes.

20 Q Did she say whether it would pass that test?

21 A Well, generally she said -- generally, yes. It
22 seems that -- from what I've gathered it creates the same
23 general numbing sensation that cocaine does. It is used
24 for that purpose as a numbing agent in the mouth, generally.

25 Q How do you know?

Rubin

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A How do I know? I did some research on it. I am
fairly knowledgeable about drugs. I've been writing about
drugs for many, many years.

THE COURT: You don't have a medical degree,
do you?

THE WITNESS: No, I do not.

THE COURT: Do you have a chemistry
degree?

THE WITNESS: No, I do not. But I've
written for medical magazines.

THE COURT: All right, you've written.
Very well.

(Continued on next page.)

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A Yes, sir, for a number of projects.

Q A number of projects?

A Yes, sir.

Q Did you ever contact any Government agencies to tell them that you were writing a book about narcotics?

A It hadn't reached that point as yet, no.

Q It hadn't reached that point as yet?

A No.

Q You had written a manuscript --

A I had not written --

MR. MELTZER: Objection, your Honor, objection --

THE COURT: Wait a minute, wait a minute.

MR. MELTZER: He is being argumentative again.

THE COURT: His answer is that he did not contact any Government agencies in connection with his research for writing a book on narcotics.

What did you do in 1958 when you wrote that narcotics, whom did you contact then?

THE WITNESS: It was just an article, I spoke to a number of medical people.

THE COURT: You spoke to a number of medical people, you didn't contact the Government?

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THE WITNESS: Correct, sir.

THE COURT: You wrote an article on it,
right?

THE WITNESS: Right.

THE COURT: Did you need further informa-
tion after you wrote that article?

THE WITNESS: That was about a different
subject.

THE COURT: I thought you said it was
written about cocaine.

THE WITNESS: I have written an article
in 1968 on some other drugs, LSD --

THE COURT: Did you write one on cocaine?

THE WITNESS: Not per se, no, I didn't.

THE COURT: Did you write anything on
cocaine any time before 1971?

THE WITNESS: I think I might have written --

THE COURT: No, did you or didn't you?

THE WITNESS: I might have written a
short article for some encyclopedia.

THE COURT: I want to know what you did.
If you don't know, you can say you don't know.

THE WITNESS: I don't know, your Honor.

THE COURT: All right.

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Q Did he discuss it with you?

A Yes.

Q And while they were in the apartment, in your apartment at 30 Fifth Avenue on March 31st did they perform a field test?

A Yes, they did.

THE COURT: What?

Q Did they perform such a field test or color test?

A Yes, they did.

Q And did they tell you what reaction they got? Did they tell you it turned blue, did they tell you it was positive?

A I still --

THE COURT: No, no just answer whether --

THE WITNESS: Did they tell me?

THE COURT: Yes.

THE WITNESS: I don't remember that they said anything about that. They --

Q Thank you.

THE COURT: Now wait a minute. Did you see it?

THE WITNESS: I saw it.

THE COURT: Did it turn blue?

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12

THE WITNESS: Yes, it turned blue.

THE COURT: Was the other test performed?

THE WITNESS: The stannous floride, yes
I think it was.

THE COURT: Okay, now.

Q Did anyone else ever perform the color test --

THE COURT: Did anyone -- did Mr. McElynn
tell you what it contained then?

THE WITNESS: No, I don't think he did.
He -- he told me about --

THE COURT: He performed the test?

THE WITNESS: Yes, he told me about some
impurities coming to the surface.

THE COURT: But you never said what it
contained, never told you whether it was cocaine
or not?

THE WITNESS: No, the sense of it was --

THE COURT: Just looked at it, performed
the test, some substance, and never told you
it contained cocaine, is that your testimony?

THE WITNESS: Yes, it is, your Honor.

THE COURT: All right.

Q Did anyone else ever perform the color test in
your presence?

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2 A The color test, no.

3 THE COURT: Did he say he wanted to buy
4 some more of this cocaine from you?

5 THE WITNESS: Yes, he was quite -- quite
6 enthused about it.

7 THE COURT: He was enthused about it?

8 THE WITNESS: Yes, he was.

9 THE COURT: And yet he didn't tell you
10 it contained cocaine?

11 THE WITNESS: Well, he -- I guess the
12 implication was that it was acceptable to him
13 and he wanted more of it.

14 Q Now you testified that you have negotiated or
15 talked to different people, about twenty or twenty-five
16 different --

17 A That's a rough estimate.

18 Q -- dealers or pushers, whatever.

19 MR. MELTZER: Objection to the form
20 of the question, your Honor. There is no testimony
21 that he has negotiated with that number of people.
22 The question as formed is prejudicial.

23 THE COURT: No, I think he did testify
24 that he talked to quite a number.

25 MR. MELTZER: He said he talked to people.

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Yes, he said he talked to them. The question says --

THE COURT: Twenty-five, did you say twenty-five?

THE WITNESS: Well, I spoke to twenty-five people. In most cases it wasn't negotiations, it was merely a discussion --

THE COURT: Talked to twenty-five.

Q You talked to twenty-five?

A About.

Q Right. Did you ever talk to anyone of them in depth about narcotics? More than a couple of meetings?

A More than a couple, no.

Q Did you ever tell any of these individuals that you were writing a book about narcotics?

A In the beginning I did, yes.

Q You did, and what happened?

A They generally turned over very quickly.

Q And when was that?

A Oh, December, January, November. November, December of 1971.

THE COURT: Did you ever tell Agent McElynn you were writing a book?

THE WITNESS: No, I did not.

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2 THE COURT: Ever tell Agent Sheehan --
3 what's his name?

4 MR. DE PETRIS: Sheehan.

5 THE COURT: You were writing a book?

6 THE WITNESS: No, I did not.

7 THE COURT: Okay.

8 Q Why not?

9 THE COURT: Well, that's objectionable.

10 A Should I answer that, your Honor?

11 THE COURT: No, I said it's objectionable
12 although I think -- do you want him to say why?
13 Do you have any objection to that?

14 MR. SMITH: I would like to have the
15 question read back.

16 THE COURT: It's a why question, why not?

17 MR. SMITH: No, I would object to that,
18 your Honor.

19 THE COURT: You do object?

20 MR. SMITH: Yes.

21 THE COURT: Okay, sustained.

22 Q You never talked to anyone in depth?

23 A Well, it depends on how you define in depth?

24 Q More than one or two conversations?

25 A No, it generally reached a point where I got enough

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2 information -- as much information as I thought I could
3 extract by one or two or three interviews.

4 Q I believe there was some testimony this
5 morning about a book, the dealer, by Woodley, is that --

6 A Yes.

7 Q Are you familiar with that book?

8 A I have read it.

9 Q You have read it. And what is that book about?

10 MR. MELTZER: Objection, your Honor.

11 THE COURT: Oh, Mr. De Petris, you
12 know I indicated to defense counsel that we aren't
13 going into books here or treatises. It's a
14 simple issue involved.

15 Now if there is anything this witness
16 stated that was in the book you may, of course,
17 cross-examine him on that particular issue but
18 you can't ask him to give this Jury a long
19 dissertation on what's inside the book. I mean
20 that also is irrelevant. It's taking us way off
21 the issue here. It's very interesting but
22 I am sure the Jury has something else to do
23 other than staying here for a week or two
24 listening to dissertations as to what's in
25 any particular book. So proceed along those

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2 lines, please.

3 MR. DE PETRIS: You don't want me --

4 THE COURT: If you want to ask him about
5 any specific statement in the book.

6 MR. DE PETRIS: I wanted to ask him
7 about the entire book, just three or four questions
8 about the book.

9 MR. SMITH: I would object to that, your
10 Honor. We weren't permitted to go into that sort
11 of length.

12 THE COURT: Well, no, of course he was--
13 in your case he was going to testify about his
14 writings, which was hardly relevant, but he's
15 already on direct or cross mentioned this
16 Woodley book and if there is any meaningful
17 cross-examination in connection with impeachment
18 that's one thing, but just to hear him talk
19 about the Woodley book is an entirely different
20 thing and I don't think it's helpful to the
21 Jury. It certainly isn't helpful to me.

22 Now, you have to decide what kind of
23 questions you're going to ask.

24 MR. DE PETRIS: I will ask him three specific
25 questions.

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2 had shown me many things that he was doing, and I knew about
3 the project he was working on.

4 Q What project was this?

5 A He was working on a book on sex, human sexuality, to
6 me it was a sex book, I wasn't familiar with that name, a
7 part of it, a section of the book, had to do with drugs, the
8 use of drugs in combination with sex, and what happened and
9 how --

10 THE COURT: Well, all right, he was work-
11 ing on a book dealing with sex, a part of the
12 book had to do with drugs. Very well.

13 Q Did there --

14 THE COURT: Anyway, the book has never
15 been published; isn't that right?

16 THE WITNESS: It is still being written,
17 sir.

18 THE COURT: Yes.

19 Q Did there come a time when you discussed with
20 Mr. Rubin his method of acquiring information for the book?

21 A Yes, sir, we talked about it often.

22 Q And what was the nature of these discussions
23 you had with him in this area?

24 A Well, Joseph told me that he had --

25 MR. DE PETRIS: Your Honor, this is hear-

1
2 say.

3 THE COURT: Yes, that is right.

4 MR. MELTZER: If your Honor please, I
5 respectfully submit that this goes to the --

6 THE COURT: Well, I think that what we
7 are dealing here with, I believe, is an effort
8 to indicate that these defendants did not know
9 that cocaine was involved here: Is that right?

10 MR. MELTZER: That is part of the whole
11 story, yes, sir.

12 THE COURT: Well, I will take it for what
13 it is worth, but I don't want any long detailed
14 description of what is in the book, nor any other
15 irrelevancies.

16 MR. MELTZER: I am going to ask you, Mr.
17 Mayer, in answering these questions, not to cross
18 all your T's and dot all of your I's, and just
19 keep your answers simple.

20 THE COURT: Just answer the questions and
21 don't volunteer anything else but answers to the
22 questions.

23 MR. MELTZER: Could you read the last ques-
24 tion, Mr. Karr?

25 (The Reporter then repeated the following

published?

THE WITNESS: The book is still being written, your Honor.

THE COURT: Yes.

Q Is this book on the effect of drugs on sexual behavior? Is that what it is?

A The effect of drugs in general.

Q Is that what the book --

A No. The book doesn't deal specifically with that subject entirely. A portion of the book does.

Q The book deals with sexual behavior?

A Human sexuality.

Q I see.

A portion of the book is on the effect of drugs on sexual behavior?

A That is correct.

Q I see.

Now, you say you obtained these five samples I believe from Celine Oppenheim? Mrs. Oppenheim?

A That is correct.

Q And she is a widow?

A Yes.

Q Did you know her very well?

A We were friends.

He said -- shall I describe --

THE COURT: No, you say one column related to drugs?

THE WITNESS: He had an idea for a major investigative --

THE COURT: No, I do not want that. You answer questions yes or no. We are not here to get the opinions of particular witnesses. We have had the testimony that this defendant, Mr. Rubin, is a writer and you are confirming the fact that he is a writer.

The issue here is not whether he is or is not a writer or writes columns.

THE WITNESS: Your Honor, if I may --

THE COURT: No, you cannot do this in Court. I made that clear before.

Q Now, in the beginning of March, did he mention to you that he was investigating the possibility of drugs?

A Yes, he did.

Q Did he mention to you that he had visited --

MR. DePETRIS: This is hearsay, too --

THE COURT: No, I will permit that.

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2 Q Did he mention to you that he had
3 talked to some possible dealers in drugs?

4 A Yes, he did.

5 Q And this was when?

6 A This was early in March.

7 Q Now, what was the conclusion of these
8 discussions, ultimately?

9 THE COURT: What do you mean, "the
10 conclusions?"

11 Q Did anything come of these discussions?

12 A I told Mr. Rubin that even though --

13 THE COURT: No, I do not think we are
14 going to permit that unless the witness is
15 able to limit herself to a short answer.

16 What is the conclusion, did you
17 hire him to write an article, or didn't you?

18 The conversation that you had with
19 Mr. Rubin on writing articles for your Life
20 Style Magazine is not particularly relevant
21 to the issues in this case and is not an
22 open door for further elaboration upon any
23 editorial policies of Life Style or any
24 columns that you wanted him to write.

25 Q There were no further discussions after

the outline?

MR. MELTZER: I think that's argumentative, as to whether it's a major part or not. It speaks for itself.

THE COURT: Furthermore, Mr. DePetris, we made this quite clear that we did not want to turn this trial into a question involving books, and you are just attempting to do that, which I suggested to Mr. Smith that he not do.

Now limit your questions, please. We are not going into this book. This is an issue here as to whether these two defendants did or did not knowingly sell cocaine.

Now, let's not go into these collateral issues.

MR. DE PETRIS: He's attempting to show that the entire book --

THE COURT: No. He asked a question which I said was proper.

But you now are going into a book which I said to Mr. Smith I didn't want to waste the jury's time with.

MR. DE PETRIS: I have no further questions.

THE COURT: All right, Mr. Smith.

22

Golddoff

MR. SMITH: Your Honor, I really believe I'm entitled to a little more redirect now, in the light of the cross examination.

THE COURT: Well, no. I am not going into this book.

MR. SMITH: No further questions, your Honor.

THE COURT: Very well.

You may step down, Mr. Golddoff.

THE WITNESS: Thank you.

THE COURT: No, no, you won't get very far that way. Push.

THE WITNESS Thank you.

THE COURT: We are waiting for a witness.

MR. SMITH: The defense calls the witness Harold Steinberg.

MR. MELTZER: May we approach the bench before he comes in, your Honor? It may help us, your Honor.

THE COURT: All right.

(continued on the next page.)

1
2 occurred?

3 A To the best of my recollection, they were about in
4 October of 1970 or thereabouts. I couldn't be sure.

5 This letter is dated October 26th.

6 THE COURT: Was that actually signed?

7 THE WITNESS: This is a copy that is
8 unsigned.

9 THE COURT: Do you have a signed copy?

10 THE WITNESS: I think there should be a
11 signed copy in our file. It does bear out the
12 discussion.

13 THE COURT: It doesn't show you had a
14 contract?

15 THE WITNESS: No.

16 Q In fact, was any payments made by Chelsea
17 House to the defendant Rubin in connection with this
18 agreement?

19 A There was a payment made. It was the sum of \$1,000
20 which was in the form of a loan and the loan was made to
21 Mr. Rubin because we were working on some projects and he
22 did need some money and I was instrumental in getting my
23 partner to lend him the money.

24 Q Did there come a time when you discussed the
25 possibility of publication regarding drugs with the

defendant Rubin regarding drugs?

A These are the three books we had specific agreement on. We discussed many books in the course of the several months that the defendant Rubin was dealing with Chelsea House.

As I said, there was a section on drugs in the Dictionary Guide.

THE COURT: Counter-Culture?

THE WITNESS: Yes.

THE COURT: That was planned, you didn't see any book on it?

THE WITNESS: No.

THE COURT: It was just a plan?

THE WITNESS: Yes, sir.

THE COURT: As a matter of fact, no book has been published by you from Mr. Rubin?

THE WITNESS: No. I should say that we made a serious effort in this case -- you see, these are rather expensive books.

THE COURT: You mean if they were published?

THE WITNESS: Expensive to prepare. They take a lot of research and in these cases, we seek a business --

THE COURT: That depends on the ground shield?

THE WITNESS: Yes.

THE COURT: If you didn't enter into an agreement with them, the whole thing fell through?

THE WITNESS: It might.

THE COURT: And you never entered an agreement with the ground shield?

THE WITNESS: We never did.

Q When were the discussions that you have been talking about?

A This letter is dated October 20th, so it helps clear my memory, I would say prior to that, perhaps September or October.

Q How late would your discussions have extended?

A Well, they probably went through the end of 1971 or thereabouts. I couldn't say offhand.

Q Did you discuss specifically any possible publication relating to drugs with the defendant?

THE COURT: What? Any possible what?

MR. SMITH: Publication relating to drugs.

THE COURT: I think he already testified to that. That he talked about the counter-culture.

1 [Tr. p. 527]
2 Steinberg - direct

527

3 THE WITNESS: I have.

4 THE COURT: All right.

5 MR. SMITH: May I approach the bench?

6 (The following took place at side bar:)

7 THE COURT: Yes?

8 MR. SMITH: In this particular outline,
9 for the very scripts discussed between the
10 witness and as a matter of fact it bears the
11 witness' handwriting on it, I'd like to intro-
12 duce it in evidence, without otherwise identifying
13 him, as exhibit B, and ask him if he has seen
14 it and --

15 THE COURT: It is absolutely meaningless.
16 It is irrelevant.

17 The ruling is the same as it was before
18 on that.

19 MR. SMITH: We are talking now of
20 defendant's exhibit B for identification.

21 THE COURT: Which I have refused to
22 admit into evidence on the grounds it is
23 absolutely irrelevant and misleading.

24 MR. SMITH: May I have him identify his
25 handwriting on the final page?

THE COURT: No. That is doing indirectly

[April 17, 1972 Transcript]

Conversation recorded between Special Agent Lawrence P. Mc Elynn and Dennis
MAYER recorded on April 17, 1972 at 6:00 PM.

C5-72-0022 - Mitchel SORKIN etal

14-97

S/A Mc Elynn Hello

Dennis Yeah

S/A Mc Elynn Hello, Den

Dennis Yeah, let's swap ^{Sap} ~~gaw~~ stories, what happened?

S/A Mc Elynn Well, uh, I spoke to that guy

Dennis Um Hum

S/A Mc Elynn And I went in to see him

Dennis When was that

S/A Mc Elynn O.K., the night, then I, I told you, O.K., I went to see him that night and uh, I spoke to him about the thing that, uh, you know, Florida, right after and then I spoke to you, O.K., so you're up to date on that, right?

Dennis Um Hum

S/A Mc Elynn O.K., and then about, I don't know when it was, I spoke to him again Saturday

Dennis Um hum

S/A Mc Elynn And then Monday he calls me up and he says, forget it, forget everything, I don't want to know you, I don't want to know anything, uh, I'm too busy, and he gave me a whole line of shit, and I didn't know what the hell was going on.

Dennis Um hum

S/A Mc Elynn So I said to him, wait a minute and he said, well Dennis said he's gonna call you from California on Wednesday, so I said, well just a second, I came in, you know, as a favor to Dennis and to you to test that coke for you and uh, you know, I did it, and I told you how to do it, and I explained it to you, and I put myself out and he says, I don't want to bother with it, he says, I'm too busy and Dennis said don't talk to you anymore, and all this, so I didn't know what to do, so I came down on the guy a little, you know, and I said

Dennis Well, that's O.K., uh.

S/A Mc Elynn Meanwhile, I still don't know what's going on. I haven't heard from anyone in about 2 or 3 weeks.

Dennis I got - none of your people?

S/A Mc Elynn Huh, no, your people.

Dennis All right, it seems though, that the fellow doesn't want to become involved in this. That he did want to become involved in this and somebody that either carries it or does something got very seriously hurt.

S/A Mc Elynn Yeah

Dennis And so, you know, the guy just don't want to know from it, right.

S/A Mc Elynn Who, Joe?

Conversation recorded between Special Agent Lawrence P. Mc Elynn and Dennis
MAYER recorded on April 17, 1972 at 6:00 PM.

C5-72-0022 - Mitchel SORKIN

Dennis Yeah

S/A Mc Elynn Yeah

Dennis He doesn't want to know, you know, and he was doing me a favor, so let's just forget him. All right, I just got back

S/A Mc Elynn Yeah

Dennis And somebody got cracked

S/A Mc Elynn Where

Dennis In Florida

S/A Mc Elynn One of your people?

Dennis Um, one of somebody's people that, not my people, but somebody that I do things with.

S/A Mc Elynn Yeah?

Dennis All right, so he's out of the business. Now, I understand that's, there's been some problems in New York City, do you know anything about that?

S/A Mc Elynn What do you mean?

Dennis Well, I mean, there's a lot of guys going down

S/A Mc Elynn I don't know. There's a lot of bad packages around, I'll tell you that. I was beat in your absence at one point.

Dennis You were beat?

S/A Mc Elynn Yeah, I got a bad package

Dennis How could you get beat?

S/A Mc Elynn I know, the guy really did a job on me, but I took it back to him and I had a long discussion with him.

Dennis With your friend?

S/A Mc Elynn Uh, yeah.

Dennis Yeah, right.

S/A Mc Elynn And, uh, we took care of him and uh, got our money back and a little bit more, so, uh, but, you know, you gotta be careful, so I got a few other things

Dennis I'm very surprised that you got beat.

S/A Mc Elynn Well, it was one of those things, I'll explain to you when I see, I don't want, I'll explain, its a long story, I'll explain to you when I can sit down with you on how it did, so I can tell you so you can be careful, you know.

Dennis Uh hum, well, I'm pretty careful

S/A Mc Elynn Well, I mean, it's not careful, it's just, uh, you gotta be a little, I've got another few things that I can show you what to do since that time, you know, because I was in to trusting people a little more than I should have and I was, I wasn't being as careful as I should have been, you know, but that's all resolved.

Conversation recorded between Special Agent Lawrence P. Mc Elynn and Dennis
MAYER recorded on April 17, 1972 at 6:00 PM.

C5-72-0022 - Mitchel SOEKN

Dennis Let me ask you a question

S/ Am'c Elynn Yeah

Dennis Why didn't you two guys take your coats off when you were at his house?

S/A Mc Elynn Who's house?

Dennis Joe's

S/A Mc Elynn Take our coats off? I had mine off, I had a sport jacket on.

Dennis What about, uh, your buddy?

S/A Mc Elynn Hey, what do you expect? He's not gonna, you know, there was a chick there and somebody else. I mean, you know, I mean, the guy, what, what do you think? The same reason he doesn't take it off in front of you, why do you think he didn't take it off?

Dennis Probably dirty.

S/A Mc Elynn Of course, what do you expect?

Dennis He's probably dirty.

S/A Mc Elynn Yeah, but you know, I mean, uh

Dennis Well, you know, things like that freak people out.

S/A Mc Elynn But you know, hey, what do you want me to do, take my pants down for him?

Dennis Well, but you've been in the thing long enough to know.

S/A Mc Elynn Yeah

Dennis That, uh, that little things like that, you know, people don't dig.

S/A Mc Elynn Yeah

Dennis You know, so I don't, you know, like I can't get upset with the guy for uh, you know, for getting freaked out.

S/A Mc Elynn Yeah

Dennis I mean, it's you know, he's entitled.

S/A Mc Elynn Yeah, why, because Tom didn't take his coat off?

Dennis Huh, it's up to him, you know, I mean, uh

S/A Mc Elynn What did he think, that the guy was gonna hurt him or what?

Dennis Who knows, man. He didn't know anything about nothing. I didn't tell him anything. I told him 2 guys.

S/A Mc Elynn Yeah, right

Dennis You know, so that's where that's at, and now I gotta run around trying to find you something, is that the deal?

S/A Mc Elynn Well, what do you mean, I don't know, there's you know

Conversation recorded between Special Agent Lawrence P. Mc Elynn and Dennis
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C5-72-0022 - Mitchel SORKIN

Dennis Well, I'm gonna try

S/A Mc Elynn Yeah

Dennis Yeah, cause this is all bullshit, man, I mean, you know, somethings gotta happen.

S/A Mc Elynn Yeah

Dennis Cause I got, I'll tell you

S/A Mc Elynn Well, what about those people we went to that day, that we got fucked up with.

Dennis I don't want to touch them. I don't want to touch them.

S/A Mc Elynn O.K.

Dennis Uh, I have a feeling that he's one of the wise guys.

S/A Mc Elynn Yeah

Dennis So, who, you know, why do that

S/A Mc Elynn Well, you know, for the lack of something else, Den, you know.

Dennis Well, for the lack of something else, I don't want to put my head out unless you know, if I could set something up, man, I will.

S/A Mc Elynn Yeah

Dennis You know, and I'll let you do it.

S/A Mc Elynn Yeah, fine

Dennis You know, I just don't want to be around him

S/A Mc Elynn Who, Dennis?

Dennis Huh

S/A Mc Elynn Dennis?

Dennis Yeah, I don't want to be around him, cause I ^{saw a couple of} ~~hooked up with~~ his friends.

S/A Mc Elynn Oh, I understand what you mean, if you set it up with him, you'll set it up with he and I

Dennis Uh, yeah

S/A Mc Elynn I understand, yeah

Dennis Because, uh

S/A Mc Elynn What about your people in Florida, are they all wiped?

Dennis Huh?

S/A Mc Elynn Are they all wiped, the people in Florida?

OPERATOR - FOR OVERTIME

Conversation recorded between Special Agent Lawrence P. Mc Elynn and Dennis
MAYER recorded on April 17, 1972 at 6:00 PM.

C5-72-0022 - Mitchel SORKIN

A-103
S/A Mc Elynn Let me call you back

Dennis Huh?

S/A Mc Elynn I'll call you back

Dennis All right. 479

S/A Mc Elynn Yeah

Dennis No, I'm sorry, 473-9517

S/A Mc Elynn 473-95

Dennis 17

S/A Mc Elynn All right.

SPECIAL AGENT CALLS BACK - SOME CONVERSATION
IS LOST

S/A Mc Elynn He's uh

Dennis He ain't around, he's, uh, listed as a missing person. I, you know, cause
I just went out to see if he was, uh

S/A Mc Elynn Good, that takes care of your problem

Dennis I don't have no more problems that way

S/A Mc Elynn Good

Dennis You know, but, uh, the only problem that I have is I have a funny feeling that
uh, unless I'm just getting paranoid, which is possible, you know, uh, I
have a feeling I'm being looked at from time to time and I just don't dig it,
you know.

S/A Mc Elynn Really?

Dennis Yeah, that's why I want to make a

S/A Mc Elynn Where? Out when you were out on the coast?

Dennis Oh, I was definitely looked at out there, my luggage was searched 3 times.

S/A Mc Elynn Really?

Dennis Yeah

S/A Mc Elynn That's heavy, what kind of people?

Dennis What kind of people looked at me?

S/A Mc Elynn Yeah

Dennis Greasy

S/A Mc Elynn Really?

Dennis College type, very clean cut, you know.

[April 17, 1972 Transcript]

Conversation recorded between Special Agent Lawrence P. Mc Elynn and Dennis
MAYER recorded on April 17, 1972 at 6:00 PM.

C5-72-0022 - Mitchel SORKIN

0-104
S/A Mc Elynn Where, in the city?
Dennis Yeah
S/A Mc Elynn Oh
Dennis Once in L.A., once in San Francisco
S/A Mc Elynn No shit
Dennis Yep, and I ^{noticed} ~~know there's~~ a blue Ford following me in L.A. Now you know, I
might be crazy or cracking up or something, you know, I was just
S/A Mc Elynn Did you get the plate on it?
Dennis No, I didn't
S/A Mc Elynn You should have
Dennis I ran, what are you joking?
S/A Mc Elynn What the fuck did you run for? You're not doing anything wrong
Dennis Well, at the time I was
S/A Mc Elynn Oh
Dennis You know, I mean, if you're sitting in a car smoking a thing, right, if somebody's
following you and they've been following you for 3 miles and if you turn left
and they turn left, and if you make a U ~~and~~ they make a U.
S/A Mc Elynn Um, I know, I've been through that whole trip, I know what you mean.
Dennis I didn't dig it, yeah, well your car, man, is outrageous. You ought to get
a Toyota or something like that. You can spot that fucking thing 2 miles away.
Anyway, the guy that did me at the airport, very ~~a~~ clean cut looking
college kid, man, very clean, and that's, that's not local.
S/A Mc Elynn No, I guess not.
Dennis Uh uh. Those aren't local people. I don't know who the fuck they were,
but they weren't local people because he was standing there and somebody
else searched the baggage. I mean, he didn't show himself.
S/A Mc Elynn Yeah, right.
Dennis And uh.....
S/A Mc Elynn Just on the coast, though?
Dennis Um hum
S/A Mc Elynn That's interesting.
Dennis I got looked at at Kennedy, but they look at everybody.
S/A Mc Elynn Yeah, yeah, yeah.
Dennis You know, and of course, I never travel with anything.
S/A Mc Elynn Well, you shouldn't

Conversation recorded between Special Agent Lawrence P. Mc Elynn and Dennis
MAYER recorded on April 17, 1972 at 6:00 PM.

C5-72-0022 - Mitchel SORKIN

Dennis Well, I never do, you know, the most that I'll ever, you know, that'll happen to me is that I get busted with a sample, you know, and uh, so they can harass the shit out of me, what can I do about it, you know, get thrown in jail and it'll cost you 10 grand, if they want to harass you, they can harass the p's out of you.

S/A Mc Elynn That's right. They can get you for having your pants too short if they want to.

Dennis I know. Well, they can plant it on you, hey, you know, if they want to, to put you away, they'll say, hey, you know, here's a pound, good-bye Charlie, and you're gone.

S/A Mc Elynn Most of the times with a plant, though, all they want to do is get some bread out of it.

Dennis Well, local people. I'm not concerned about them. I'm concerned about the other guys, you know, because they just put a whole big program into effect, man.

S/A Mc Elynn Is that right?

Dennis And a Federal program. And, uh, from what I understand, they've got like a lot of, you know, a lot of guys running around, looking for these guys, who are doing these terrible things.

S/A Mc Elynn Yeah, but they're looking for big people, let's face it.

Dennis Well, I hope so because I ain't big.

S/A Mc Elynn That's what I mean

Dennis I don't ever want to get big. I would, if I were you, I'd be careful, because you guys are pretty big, you know.

S/A Mc Elynn No, I don't think so. I mean, compared to what's going down in the city, we're nothing.

Dennis Uh hum

S/A Mc Elynn I mean, really, I'm not even, you know, concerned about that because there's a lot of people doing a lot more than we are.

Dennis Um hum

S/A Mc Elynn So, um, it's really of little concern

Dennis Um

S/A Mc Elynn But, however....

Dennis If nothing else happens, I think I can get you laid this week.

S/A Mc Elynn That'd be cool.

Dennis Would you like to meet a chick?

S/A Mc Elynn Yeah, sure.

Conversation recorded between Special Agent Lawrence P. Mc Elynn and Dennis
MAYER recorded on April 17, 1972 at 6:00 PM.

C5-72-0022 - Mitchel SORKIN

7-18-2
A-106

Dennis In New York?

S/A Mc Elynn Yeah

Dennis O.K., there's another chick that lives on the same street, right.

S/A Mc Elynn Yeah, where is it?

Dennis Huh?

S/A Mc Elynn Where is is?

Dennis 63rd

S/A Mc Elynn Uh hum

Dennis I was living on 63rd

S/A Mc Elynn Oh yeah

Dennis East 63rd, yeah. And it's a chick lives on 62nd. Like a really nice chick, not into anything, man.

S/A Mc Elynn That's cool.

Dennis But she's into, hum

S/A Mc Elynn That's a safe place to hang your hat.

Dennis Uh, no, um, you know, I gotta get out of that area.

S/A Mc Elynn No, I'm talking about me.

Dennis Oh, Oh...

S/A Mc Elynn As long as she's not into anything, there's nobody gonna be going down on her, you know.

Dennis Uh, hum

S/A Mc Elynn Just, but anyway, back to the question at hand, what are we gonna do?

Dennis Let me work, let me work, I just got in

S/A Mc Elynn Yeah

Dennis I

S/A Mc Elynn So, your Florida people are like out of it then

Dennis Uh, at this minute, but so what, you know, uh, there's been a lot of, I understand there's been a lot of guys that have disappeared since the 31st.

S/A Mc Elynn Yeah

Dennis You know. Have you read newspapers?

S/A Mc Elynn No, what do you mean, read newspapers?

Conversation recorded between Special Agent Lawrence P. Mc Elynn and Dennis

MAYER recorded on April 17, 1972 at 6:00 PM.

C5-72-0022 - MITCHEL SORKIN

A-107

Dennis There's been ⁹ guys ~~Found~~ FOUND

S/A Mc Elynn Where?

Dennis Starting with Callo.

S/A Mc Elynn Oh, yeah, but that's like a whole different trip. That has nothing to do, you know what I mean. That's like, you know, that's heavy stuff I mean, you know, I don't, I'm not even, you know, fuck them, I mean, that's their

Dennis As soon as I heard that, I thought, uh, I figured, oh, I know a guy who might have been in that.

S/A Mc Elynn No, that's a whole different trip.

Dennis Uh, hum

S/A Mc Elynn I mean it's, those people, like

Dennis Yeah, I'm hip.

S/A Mc Elynn Yeah, I don't want to get involved with them, you know. The scores I can settle, I can settle, you know, with Tom and that's it, but like none of these heavy, those fucking heavy people'll wipe you out in a minute.

Dennis Tom talks pretty heavy, man.

S/A Mc Elynn Yeah, but, he's into his own thing, I mean, the whole thing is like we could do our people, but, you don't fuck with the big guys, you know, we're little, we're punks compared to them, let's face it. You don't want to even get involved with those kind of people.

Dennis Well, that's what I'm afraid of this other guy, that's why, you know, I don't have

S/A Mc Elynn Well, on a one to one level like that, that guy doesn't intimidate me

Dennis Well, you don't know if it is one to one

S/A Mc Elynn Well, that's what

Dennis You never know

S/A Mc Elynn That's what it would be if I had anything to do with him, you know

Dennis All right. Let me see what I can do, yeah, he, he split, too.

S/A Mc Elynn Well, look, he did, huh?

Dennis Well, he split, uh

S/A Mc Elynn Well, if he's into that whole family thing like you said, there might be a lot of heat on his people, you know, so

Dennis Well, let me find out, man

S/A Mc Elynn Yeah

Conversation recorded between Special Agent Lawrence P. Mc Elynn and Dennis
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C5-72-0022 - Mitchel SORKIN

Dennis Cause if you can get something, and you know, like I'm sure that..

S/A Mc Elynn Well, what I would like to do, if you can set anything up, is, uh, like at least cop an eighth, because, uh, anything less wouldn't be worth it, you know.

Dennis Uh hum

S/A Mc Elynn And, uh, if you get like a good price, you know, you know what the prices are, so, uh, an eighth at a decent price will be fine

Dennis I also happen to have all the chemicals

S/A Mc Elynn Oh, you got them

Dennis I got them

S/A Mc Elynn Beautiful

Dennis I got them

S/A Mc Elynn Beautiful, beautiful, well, yeah, that's how I got beat on those things, so when I sit down with you, I'll explain to you

Dennis 26 Chemicals

S/A Mc Elynn Really?

Dennis Um hum

S/A Mc Elynn Wow, what the fuck you gonna do with all those?

Dennis Guess who puts it out

S/A Mc Elynn Who?

Dennis The Federal Government

S/A Mc Elynn What do you mean, what is it?

Dennis For their people

S/A Mc Elynn No shit

Dennis Yes, sir

S/A Mc Elynn What'd you get, a little kit or something?

Dennis Uh hum

S/A Mc Elynn No shit, you have it with you

Dennis ~~--- ah-uh~~

S/A Mc Elynn Where is it?

Dennis It's being sent

S/A Mc Elynn No kidding. How much was it?

Dennis A hundred and what, no it wasn't even. It was black market like eighty.

Conversation recorded between Special Agent Lawrence P. Mc Elynn and Dennis MAYLER recorded on April 17, 1972 at 6:00 PM.

CS-72-0022 - Mitchel SORKIN

Dennis I think I paid about 35 for it.

S/A Mc Elynn No shit, what's the name of it?

Dennis It's called Master kit

S/A Mc Elynn Master?

Dennis Yeah

S/A Mc Elynn Is it easy to get?

Dennis No

S/A Mc Elynn What're you gonna, you carry the whole fucking thing around with you, what is it, a suitcase?

Dennis No, it's not, it's, it looks like a small tool box.

S/A Mc Elynn Yeah?

Dennis Um hum

S/A Mc Elynn That's cool

Dennis I'm having a leather purse designed to fit all of the pauches and droppers and

S/A Mc Elynn What is it, for all kinds of things?

Dennis Everything

S/A Mc Elynn Yeah, well you don;t have to carry the whole thing around with you then

Dennis Why not? You never know what you're gonna run into, man

S/A Mc Elynn Yeah, but, I mean, when you go out to do business, you know what you're going for

Dennis Oh, then you take a little thing with you

S/A Mc Elynn That's what I mean, you know, that's, that's kind of a give away, carrying a thing around like that

Dennis Yeah, that's true, that's true. All right, let me see what

S/A Mc Elynn You're not a Doctor on call, you know

Dennis I certainly hope not, uh

S/A McElynn Hey, listen, apologize to Joe for me, uh, if, it appears that we've got him a little upset, so, uh, just call him, explain to him the way Tom is, I mean, you know, we didn't mean any harm to the guy.

Dennis Wait a second (in background) - let me have another one, black - yeah.

S/A Mc Elynn You know what I mean. That's just the way that Tom is and if, you know, if he scared the guy, then I apologize, but uh..

Dennis Well, see, the guy, the guy is a legitimate person

Conversation recorded between Special Agent Lawrence P. Mc Elynn and Dennis HAYER recorded on April 17, 1972 at 6:00 PM.

C5-72-0022 - Mitchel SORKIN

S/A Mc Elynn Um hum

Dennis And he doesn't do things, he really doesn't

S/A Mc Elynn Yeah

Dennis Um, he's, you know, anybody can put something together and pick up a couple of extra dollars.

S/A Mc Elynn Yeah, sure

Dennis Well, fine, you know

S/A Mc Elynn That's the impression I got

Dennis And, uh, he's very affluent and he's a very good writer and he's also a lawyer.

S/A Mc Elynn Yeah

Dennis You know, and he, I don't know, who knows, you know, I mean the guy is freaked out of his head.

S/A Mc Elynn The impression I got

Dennis Right now

S/A Mc Elynn The impression I got, why

Dennis I don't know

S/A Mc Elynn The impression I got from him though, like he was a stone amateur and didn't know what the fuck was happening

Dennis That's exactly what he is

S/A Mc Elynn You know, and like I was getting a little pissed while I was there because I could see it, like the guy just wasn't into anything

Dennis Well, I told him to give you the one thing and you would say yes or no and this thing would go down in the meantime, you know

S/A Mc Elynn Yeah, yeah

Dennis I'm on the west coast, I can't make, I got cracked with, uh, fucking on the telephone with a dirty credit card and uh, so, I'm not making any calls, that's why I didn't call you, 'cause I didn't want anything to go down in the books. I didn't want to dial your home phone number and use a credit card because that's a

S/A Mc Elynn Just call and reverse the charges

Dennis I didn't want to do that either

S/A Mc Elynn Well

Dennis That's a matter of record

Conversation recorded between Special Agent Lawrence P. Mc Elynn and Dennis
MAYLER recorded on April 17, 1972 at 6:00 PM.

C5-72-0022 - Mitchel SORUMIN

S/A Mc Elynn Yeah

Dennis Uh, what I might do sometime this week is to come out by you.

S/A Mc Elynn O.K.

Dennis You know, and sit down. Let me see if I can get something. In the
meantime, I'll talk to this chick and I'll call you tomorrow. What time
you get up?

S/A Mc Elynn Well, you know I'll be here

Dennis 12?

S/A Mc Elynn Well, you can, you know, if it's important, you wake me up, that's all

Dennis If it's important, I'll wake you up

S/A Mc Elynn That's all

Dennis If it's important, I'll be there

S/A Mc Elynn All right

Dennis O.K.

S/A Mc Elynn Fine

Dennis Take it easy

S/A Mc Elynn So long

Dennis So long

- END OF CONVERSATION -

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Index No. 74-1181

UNITED STATES OF AMERICA,

against

Plaintiff -
Appellee

AFFIDAVIT OF SERVICE
BY MAIL

JOSEPH RUBIN,

Defendant
Appellant

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at 36-16
24th Street, L.I.C., New York, 11106

~~two copies of~~

That on April 8

19 74 deponent served the annexed

APPELLANTS APPENDIX

on Edward Boyd, Esq. U.S. Attorney
attorney(x) for plaintiff-appellee
in this action at 225 Cadman Plaza East, Brooklyn, New York
the address designated by said attorney(x) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in—a ~~post office~~—official depository under the exclusive care
and custody of the United States Postal Service within the State of New York.

Sworn to before me this 8TH.
day of April, 1974.

Sanford L. Rotter, Jr.

SANFORD L. ROTTER, JR.
Notary Public, State of New York
No. 313300003
Qualified in New York County
Commission Expires March 30, 1975

Roy G. Nelson
The name signed must be printed beneath
ROY G. NELSON